

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

**No. CV 10-0279 LH/LAM
CR 02-1587 LH**

JAMES PLATERO,

Defendant/Movant.

ORDER

THIS MATTER is before the Court upon Defendant/Movant's *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (CV Doc. 1; CR Doc. 38) and *Application to Proceed In Forma Pauperis, Supporting Documentation and Order* (CV Doc. 2; CR Doc. 39). It appears from the record that Defendant/Movant was found indigent in his criminal proceeding (CR Doc. 6), and the IFP motion will therefore be denied as moot. Defendant/Movant will be required to show cause why his Section 2255 motion should not be dismissed as untimely. *See* Rule 4(b) of the Rules Governing Section 2255 Cases in the United States District Courts.

The Court entered judgment on Defendant/Movant's conviction on October 29, 2003 (CR Doc. 36). Defendant/Movant did not appeal his conviction or sentence. He then filed his § 2255 motion on March 24, 2010, more than six years after entry of judgment. The applicable one-year limitation period in § 2255 has long expired (*see United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000)), and Defendant/Movant's motion must be dismissed unless there is a basis for

tolling (*see United States v. Cordova*, No. 99-1306, 202 F.3d 283, 1999 WL 1136759, at *1 (10th Cir. Dec 13, 1999) (unpublished)).

The Court raises the time bar to Defendant/Movant's Section 2255 motion *sua sponte* and will allow him an opportunity to respond. *See Hare v. Ray*, No. 00-6143, 232 F.3d 901, 2000 WL 1335428, at *1-2 (10th Cir. Sept. 15, 2000) (unpublished) (noting that timeliness of § 2254 petition was raised *sua sponte* and allowing petitioner opportunity to be heard by filing objections); *Hines v. United States*, 971 F.2d 506, 507-09 (10th Cir. 1992) (same for procedural default in § 2255 proceeding). Defendant/Movant will be directed to show cause why his § 2255 motion should not be dismissed as untimely. Failure to respond to this Order or otherwise show cause **may result in dismissal of the motion without further notice.**

IT IS THEREFORE ORDERED that Defendant/Movant's *Application to Proceed In Forma Pauperis, Supporting Documentation and Order* (CV Doc. 2; CR Doc. 39) is **DENIED** as moot;

IT IS FURTHER ORDERED that, **within thirty (30) days from entry of this order**, Defendant/Movant may file a response to this Order showing cause, if any, why his § 2255 motion should not be dismissed as untimely.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE